REMARKS/ARGUMENTS

This reply is responsive to a telephonic interview with the Examiner on October 25, 2006. Reconsideration and allowance of the application and presently pending claims 1-16 are respectfully requested.

Present Status of the Patent Application

Claims 1-16 remain pending in the present application. Claims 1, 4, and 7 have been amended. Claims 14-16 have been added. The amendments to the claims were made to render them more clear and definite and to emphasize the patentable novelty thereof. There is no intent to surrender equivalence. No new search should be required.

Interview with the Examiner

Examiner Jean Corrielus, Bernard Kleinke, and Scott Lohnes participated in a telephonic interview regarding the above-referenced patent application on October 25, 2006. The invention, claims, and prior art were discussed during the interview. A proposed amendment to claim 1 was provided to Examiner Corrielus for discussion during the interview. This claim was discussed in general and in view of Lazarus et al. (United States Patent No. 6,430,539). The principal arguments were that Lazarus does not disclose the use of classification trees generating sets of consumer clusters or determining an optimal set of consumer clusters. No agreement to the patentability of the claims was reached.

Response to Claim Rejections Under 35 U.S.C. §102

Claims 1, 4, and 7-12 have been rejected under 35 U.S.C. 102 as allegedly being anticipated by Lazarus et al. (U.S. Patent No. 6,430,539). Applicants respectfully traverse this rejection.

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For a proper rejection of a claim under 35 U.S.C. §102(b), the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

The Lazarus patent discloses a predictive modeling to cluster merchant vectors representing specific merchants to form merchant segments. Consumer spending habits are used in selected past time periods to predict spending patterns in subsequent time periods. Thus, the behavior (spending habits) of consumers is used to create merchant segments or clusters, to predict future spending in that cluster of merchants.

Independent Claim 1

Independent claim 1, as amended, is allowable for at least the reason that Lazarus does not disclose, teach, or suggest either of the following:

1)   "searching said consumer clusters sets for an optimal consumer cluster set" or

2)   "wherein the searching includes:

storing data for defining evaluation profiles to evaluate partitioning of the consumer population;

determining counts for each of the decision nodes of each of the classification trees, the counts including a right split count, a left split count, and a total count for each of the decision nodes;

storing summaries of the counts;

determining a performance for each of the classification trees based on the evaluation profile data and the summaries of counts,

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wherein the determining a performance includes calculating a measure for each of the decision nodes of each of the classification trees based on the counts of each decision node; and

comparing the performance of the classification trees to determine the classification tree producing the optimal consumer cluster set"

1) "searching said consumer clusters sets for an optimal consumer cluster set"

As can be verified from a review of Lazarus, there is no teaching or disclosure of "searching said consumer clusters sets for an optimal consumer cluster set." This element was only addressed in the Office Action by reference to two sections of the Lazarus patent (col. 11, lines 56-65 and col. 14, lines 44-51). These sections only discuss analyzing consumer accounts to determine their membership in which segments, and to describe what information is included in each consumer's record. The Applicant respectfully submits that these sections of Lazarus do **not** even remotely disclose this element of the present application. Lazarus deals with merchant clusters or segments, and does **not** teach "sets" nor an "optimal" set. The merchant clusters of Lazarus are created using the behavioral data (the spending habits) of consumers, and **no** demographic data is used to create the merchant clusters. The demographic data of the consumers in each merchant cluster is merely utilized to describe the consumers in that particular merchant cluster, and **not** to create the merchant cluster itself. Therefore, Lazarus does not disclose "searching said consumer clusters sets for an optimal consumer cluster set."

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2) *"wherein the searching includes:*

storing data for defining evaluation profiles to evaluate partitioning of the consumer population;

...."

As can be verified from a review of Lazarus, there is no teaching or disclosure of "searching" as defined in claim 1. In fact, Lazarus does not teach or suggest any of the following searching steps:

1) "storing data for defining evaluation profiles to evaluate partitioning of the consumer population;"

2) "determining counts for each of the decision nodes of each of the classification trees, the counts including a right split count, a left split count, and a total count for each of the decision nodes;"

3) "storing summaries of the counts;"

4) "determining a performance for each of the classification trees based on the evaluation profile data and the summaries of counts, wherein the determining a performance includes calculating a measure for each of the decision nodes of each of the classification trees based on the counts of each decision node; and"

5) "comparing the performance of the classification trees to determine the classification tree producing the optimal consumer cluster set"

Therefore, Lazarus does not disclose "searching" as defined by claim 1.

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Independent Claim 4

Independent claim 4, as amended, is allowable for at least the same reasons as described above regarding claim 1. Accordingly, the Lazarus patent fails to teach or disclose the invention as defined by claim 4, and the rejection of claim 4 should be withdrawn.

Independent Claim 7

Independent claim 7, as amended, is allowable for at least the same reasons as described above regarding claim 1. Accordingly, the Lazarus patent fails to teach or disclose the invention as defined by claim 7, and the rejection of claim 7 should be withdrawn.

Response to Claim Rejections Under 35 U.S.C. §103

Claims 2, 3, 5, 6, and 13 have been rejected under 35 U.S.C. 102 as allegedly being unpatentable over Lazarus in view of Zhang article entitled "Classification Trees." Dependent claims 2 and 3, 5 and 6, and 13 are believed to be allowable for at least the reason that these claims depend from allowable independent claims 1, 4, and 7, respectively. *In re Fine,* 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Dependent Claims

Dependent claims 2, 3, and 14; 5, 6, and 15; and 8-12 and 16, which include new claims 14-16, are believed to be allowable for at least the reason that these claims depend from allowable independent claims 1; 4; and 7, respectively. *In re Fine,* 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

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CONCLUSION

The other cited art of record has been reviewed, and it is believed that the claims, as amended, patentably distinguish thereover.
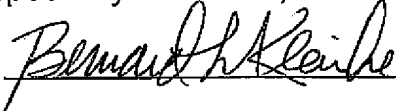
In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed, rendered moot, and/or accommodated, and that now pending claims 1-16 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned at 619-231-3666.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date: November 27, 2006

By: _____

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